

AGENDA



BERKELEY CITY COUNCIL MEETING

TUESDAY, NOVEMBER 27, 2012

7:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – GORDON WOZNAK

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, CMC, Acting City Clerk, 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Five persons selected by lottery will have two minutes each to address matters not on the Council agenda. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a name card to the City Clerk in person at the meeting location and prior to commencement of that meeting. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters.*

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Up to three speakers will be entitled to two minutes each to speak in opposition to or support of a Consent Calendar Item. The Presiding Officer will ask additional persons in the audience to stand to demonstrate their respective opposition to or support of the item.*

In the event that there are more than three persons wishing to speak either in opposition to or support of a "Consent" item, the Presiding Officer will move the item to the beginning of the Action Calendar. Prior to moving the item, the Presiding Officer will fully inform those persons in the audience of this process.

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

The Council will first determine whether to move items on the agenda for action or "Information" to the "Consent Calendar", or move "Consent Calendar" items to action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

After hearing from public speakers regarding items remaining on the Consent Calendar, any Council Member may move any Information or Consent item to "Action", however no additional items can be moved onto the Consent Calendar at that point. Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items removed from the Consent Calendar to the Action Calendar for additional public comment, at the time the matter is taken up during the Action Calendar, public comment will be limited to persons who have not previously addressed that item during the Consent Calendar related public comment period.

1. Amending BMC Chapter 7.36; Transient Occupancy Tax Ordinance

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,269-N.S. amending Berkeley Municipal Code Chapter 7.36, the Transient Occupancy Tax (TOT) Ordinance, to allow hotel/motel assessees to pass through the cost of Berkeley Tourism Business Improvement District (BTBID) assessments to their guests without it being subject to TOT.

First Reading Vote: All ayes

Financial Implications: See report

Contact: Michael Caplan, Office of Economic Development, 981-7530

2. Lease Agreement: The Framer's Outlet at 2435 Channing Way

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,270-N.S. authorizing the City Manager to execute a lease agreement with The Framer's Outlet, for an initial term starting February 1, 2013 through January 31, 2018, with an option to extend for an additional 5 years, for the purpose of operating a ready-made frame outlet at 2435 Channing Way in the Telegraph Channing Garage Shops.

First Reading Vote: All ayes

Financial Implications: See report

Contact: Andrew Clough, Public Works, 981-6300

Consent Calendar

- 3. Consolidating the Parks and Recreation Commission and the Waterfront Commission into a New Parks and Waterfront Commission; Repealing and Re-enacting BMC Chapter 3.26 and Repealing Chapter 3.36**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,271-N.S. repealing and re-enacting Berkeley Municipal Code Chapter 3.26 to create the Parks and Waterfront Commission and repealing Berkeley Municipal Code Chapter 3.36, effective July 1, 2013.
First Reading Vote: All ayes
Financial Implications: See report
Contact: William Rogers, City Manager's Office, 981-7000
- 4. Consolidating the Parks and Recreation Commission and the Commission on Early Childhood Education into a new Children, Youth, and Recreation Commission; Adding BMC Chapter 3.27**
From: City Manager
Recommendation:
Adopt second reading of Ordinance No. 7,272-N.S. adding Berkeley Municipal Code Chapter 3.27 to create the Children, Youth, and Recreation Commission.
First Reading Vote: All ayes
Financial Implications: See report
Contact: William Rogers, City Manager's Office, 981-7000
- 5. Extension of the Term of the Waterfront Commission - Amending Berkeley Municipal Code Section 3.36.070**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,273-N.S. amending Section 3.36.070 of the Berkeley Municipal Code to extend the term of the Waterfront Commission to July 1, 2013.
First Reading Vote: All ayes
Financial Implications: See report
Contact: Mark Numainville, Acting City Clerk, 981-6900
- 6. Enacting BMC Chapter 13.79, Automatically Renewing Leases**
From: City Manager
Recommendation: Adopt first reading of an Ordinance enacting Berkeley Municipal Code Chapter 13.79 Automatically Renewing Leases Ordinance.
Financial Implications: Unknown
Contact: Zach Cowan, City Attorney, 981-6950
- 7. Revised Records Retention Schedule**
From: City Manager
Recommendation: Adopt a Resolution approving the revised Records Retention Schedule in compliance with the City's Records Management Program and rescinding Resolution No. 64,546-N.S.
Financial Implications: None
Contact: Mark Numainville, Acting City Clerk, 981-6900

Consent Calendar

- 8. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on November 27, 2012**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$340,000
Contact: Robert Hicks, Finance, 981-7300
- 9. Revenue Grant: U.S. Food and Drug Administration for Improving Retail Food Program Standards**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a revenue grant award from the U.S. Food and Drug Administration (FDA) in the total amount of \$2,500 in FY 2013 for improving retail food program standards and executing any resultant revenue agreements and amendments.
Financial Implications: One-Time Grant; Special Revenue - \$2,500
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
- 10. Amendment to Mental Health Commission Enabling Legislation**
From: City Manager
Recommendation: Adopt a Resolution amending the Mental Health Commission Enabling Legislation and rescinding Resolution No. 57,078-N.S.
Financial Implications: None
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
- 11. Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**
From: City Manager
Recommendation: Adopt a Resolution approving a new three (3) year Memorandum Agreement (hereinafter referred to as "Agreement") with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of June 24, 2012 through June 20, 2015 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new Agreement.
Financial Implications: See report
Contact: David Hodgkins, Human Resources, 981-6800
- 12. Contract No. 7187B Amendment: City of Inglewood Parking Citation Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 7187B with City of Inglewood for parking citation services, increasing the contract amount by \$245,000 for a total not to exceed \$2,995,000 from November 1, 2006 to June 30, 2013.
Financial Implications: General Fund - \$245,000
Contact: Donna LaSala, Information Technology, 981-6500

Consent Calendar

- 13. Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with TheatreFIRST, Inc. for the use and management of the Live Oak Theatre at the Live Oak Community Center located at 1301 Shattuck Avenue for a term of five years with one five-year option.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 14. Contract: AC Transit Bus Pass (EasyPass) Program for City Employees**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Alameda-Contra Costa County Transit District (AC Transit) for the continuation of an annual bus transit pass (EasyPass) program for City of Berkeley employees, in an amount not to exceed \$190,000 for the 2-year period beginning January 1, 2013 and ending December 31, 2014.
Financial Implications: Payroll Deduction Trust Acct - \$190,000
Contact: Andrew Clough, Public Works, 981-6300
- 15. Contract: URS Corporation for Planning and Engineering Services for Permeable Paver Demonstration Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with URS Corporation for planning and engineering services for a demonstration project using permeable pavers on a full-width section of a City street, the location of which to be determined during the initial phase of the contract, in an amount not to exceed \$232,870 for a period of 2 years.
Financial Implications: Special Gas Tax Improvement Fund - \$232,870
Contact: Andrew Clough, Public Works, 981-6300
- 16. License Agreement: Berkeley Unified School District to Use City Council Chambers and Adjoining Meeting Space at 2134 Martin Luther King, Jr. Way**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a license agreement with the Berkeley Unified School District (BUSD) to use City Council Chambers, located at 2134 Martin Luther King Jr. Way (Old City Hall) for the purpose of regular and special meetings of BUSD Board of Education, and to use adjacent onsite parking.
Financial Implications: Building Maintenance Fund - \$7 (revenue)
Contact: Andrew Clough, Public Works, 981-6300
- 17. Update of the 5-Year Street Paving Plan FY 2013 - FY 2017**
From: Public Works Commission
Recommendation: Adopt a Resolution updating the City's 5-Year Street Paving Plan for FY 2013 - FY 2017, and approving the allocation of up to 15% discretionary funding (approximately \$420,000) in FY 2013 for a trial installation of permeable paving.
Financial Implications: See report
Contact: Jeffrey Egeberg, Commission Secretary, 981-6406

Consent Calendar

18. **Mental Health Commission Reappointment: Jeffrey Davis**
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the reappointment of Jeffrey Davis as a representative of the Special Public Interest Category for a second term beginning November 28, 2012 and ending November 27, 2015.
Financial Implications: None
Contact: Carol Patterson, Commission Secretary, 981-5217

Council Consent Items

19. **Appointment of Council Member Linda Maio as Vice President of the Council**
From: Mayor Bates
Recommendation: Adopt a Resolution appointing Council Member Linda Maio as Vice President of the Council for a term of two years beginning December 3, 2012 to December 1, 2014.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
20. **Seating Arrangement for Council Members during City Council Meetings**
From: Mayor Bates
Recommendation: Adopt a Resolution changing seating placement of City Council members as follows on the dais (From left to right, facing the dais): Wengraf, Anderson, Worthington, Capitelli, Bates, Maio, Moore, Wozniak, and Arreguin.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
21. **Council Appointments to Regional Committees and Commissions**
From: Mayor Bates
Recommendation: Adopt a Resolution appointing Council members to their current committees, commissions, and regional bodies for the years 2013-2014. Please see the attached resolution for committee and committee names and the pertinent appointed council member.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
22. **Re-Appointment of Dr. Jan Washburn to the Alameda County Mosquito Abatement District Board of Trustees**
From: Mayor Bates
Recommendation: Adopt a Resolution reappointing Dr. Jan Washburn to the Board of Trustees of the Alameda County Abatement District for a two-year term commencing on January 2, 2013 and ending on January 1, 2015.
Financial Implications: None for the City of Berkeley.
Contact: Tom Bates, Mayor, 981-7100.

Council Consent Items

23. **Rescinding Resolution No. 65,865-N.S. and Adopting the 2013 Meeting Schedule to Reflect the Cancellation of the January 15, 2013 Meeting and Adding a Regular City Council Meeting on January 29, 2013**
From: Mayor Bates
Recommendation: Adopt a Resolution rescinding Resolution No. 65,865-N.S and adopting 2013 meeting schedule to reflect the cancellation of the January 15, 2013 regular council meeting and adding a regular City Council meeting on January 29, 2013.
Financial Implications: Minimal
Contact: Tom Bates, Mayor, 981-7100
24. **Sugared Beverage Tax**
From: Councilmember Maio
Recommendation: Schedule a worksession regarding levying a tax on sugared beverages as was proposed on the Richmond ballot.
Financial Implications: None
Contact: Linda Maio, Councilmember, District 1, 981-7110
25. **Proclamation Acknowledging the Contributions of Berkeley Rotary Club and the 10th Anniversary of the Berkeley Rotary 3rd Grade Dictionary Giveaway**
From: Councilmember Wengraf
Recommendation: Approve a proclamation acknowledging the contributions of the Berkeley Rotary Club and the 10th Anniversary of the Berkeley Rotary's 3rd Grade Dictionary Giveaway, to be presented December 11, 2012.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
26. **Adding a Meeting for the Public Works Commission**
From: Councilmember Wozniak
Recommendation: Allow for an additional meeting in FY 2013 for the Public Works Commission (PWC) as a result of needing to add a Special Meeting on short notice.
Financial Implications: None
Contact: Gordon Wozniak, Councilmember, District 8, 981-7180

Action Calendar

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up. Where an item was moved from the Consent Calendar to Action no speaker who has already spoken on that item would be entitled to speak to that item again.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action Calendar – Old Business

27. **Youth Spirit Artworks Request for Additional Funding to Get and Keep Homeless Youth Off Berkeley Streets** *(Continued from November 13, 2012)*
From: Councilmembers Anderson and Worthington
Recommendation: Consider Youth Spirit Artworks request for \$50,000 leveraging existing homeless youth services to get and keep homeless youth off Berkeley Streets through art jobs combined with referrals to services and shelter.
Financial Implications: Potentially \$50,000
Contact: Max Anderson, Councilmember, District 3, 981-7130

Action Calendar – New Business

28. **Perfect Plants Patient Group – 2840-B Sacramento Street - Determination Regarding a Public Nuisance Under BMC Chapter 23B.64**
From: City Manager
Recommendation: Adopt a Resolution reflecting the City Council's November 13, 2012 action determining that 2840-B Sacramento Street, operating as Perfect Plants Patient Group (3PG), is:
1. In violation of a) BMC Chapter 12.26 The Patients Access to Medical Cannabis Act of 2008; b) BMC Section 23E.16.070 Medical Cannabis Uses; c) BMC Section 23A.12.010; and
2. A Public Nuisance under BMC Section 23B.64.020 and ordering the use enjoined and terminated.
Financial Implications: None
Contact: Gregory Daniel, Code Enforcement, 981-2492
29. **Contract Amendment: CalPERS 3% at Age 55 Retirement Formula for Police Safety Employees and 3 Year Highest Average Compensation Earnable**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,266–N.S. amending the City's contract with CalPERS to provide the 3% at Age 55 Retirement Formula for new employees hired after the effective date of the contract amendment as set forth in California Government Code Section 21363.1 with "final compensation" calculated on the highest average annual compensation earnable by a member during three consecutive years of employment as provided in Section 20037 for local sworn police employees only to be effective December 28, 2012.
First Reading Vote: All ayes
Financial Implications: See report
Contact: David Hodgkins, Human Resources, 981-6800
30. **2010 Census: Redistricting Process and Timeline**
From: City Manager
Recommendation: Review the schedule and process for the adjustment of City Council district boundaries following the decennial census as provided for in Berkeley City Charter Article V, Section 9.
Financial Implications: None
Contact: Mark Numainville, Acting City Clerk, 981-6900

Council Action Items

31. **Budget Referral: Annual Grant for Sunday Streets Events**
From: Councilmember Capitelli
Recommendation: Refer to the 2013 budget process an ongoing budget item of \$30,000 to cover City fees for twice-annual Sunday Streets events in Berkeley.
Financial Implications: \$30,000
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150

Information Reports

32. **Status Report: Employee Benefits, Tough Decisions Ahead**
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000
33. **Audit of Citywide Payment-Card Acceptance: Is Cardholder Information Safe?**
From: City Manager
Contact: Robert Hicks, Finance, 981-7300
34. **Condominium Conversion Program - Annual Report**
From: City Manager
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
35. **Status Report: Failing Streets: Time to Change Direction to Achieve Sustainability**
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
36. **League of California Cities Annual Conference**
From: Councilmember Wengraf
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Public Comment – Including Items Not Listed on the Agenda –

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc., 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6908 or clerk@cityofberkeley.info for further information.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.ci.berkeley.ca.us/video> and KPFB Radio 89.3. Archived indexed video streams are available at <http://www.ci.berkeley.ca.us/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of the civic center located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.ci.berkeley.ca.us/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department
2180 Milvia Street
Tel: 510-981-6900
TDD: 510-981-6903
Fax: 510-981-6901
Email: clerk@ci.berkeley.ca.us

Libraries:
Main - 2090 Kittredge Street
Claremont Branch – 2940 Benvenue

North Branch – 1170 The Alameda

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 15, 2012.***

A handwritten signature in black ink, appearing to read 'Mark Numainville'.

Mark Numainville, Acting City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.*

### **Item 13: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center**

1. Michele Wolpe
2. Petra Lamberson
3. Annie Organ
4. Roseanne & Richard Packard
5. Mikel Clifford
6. Alma Pasic
7. Carolyn Day
8. Howard & Cindi Goldberg
9. Mina Jenner
10. Patrick Feigelson
11. Victoria Siegel
12. Melissa Bergen
13. Bruce Kaplan
14. Michelle Gabriel
15. Donna Davis
16. Jerome Solberg
17. Alan Barkan
18. Norah Foster
19. Stanley Spenger
20. Martha Luehrmann
21. Mrs. Lee Siegel
22. Shu Ping Guan
23. Jonathan Gordon
24. Peter Fisher

### **UC Football Game**

25. sentwistle@\*\*\*.net

### **Alta Bates Hospital Closure**

26. Gretchen Snyder

